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Professional Bank
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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 In Re:	)	No. 21-50028 SLJ 7
)	
13 Evander Frank Kane,	)	Chapter 7
)	
14)	
)	
15 Debtor,)	
)	
16 _____)	
	)	Adv. Proc. No.
17 Professional Bank,)	
)	
18 Plaintiff,	)	Complaint for
	)	1) Nondischargeable Debt
19 v.	)	2) Declaratory Relief
	)	3) To Deny Discharge
20 Evander Frank Kane,	)	4) Determine Validity of Lien
	)	5) Injunctive Relief
21 Defendant.)	
)	
22	)	Demand for Jury Trial
)	
23 _____)	

24
25 INTRODUCTION

26 1. This Adversary Proceeding and Complaint are brought by
27 secured creditor Professional Bank ("Professional Bank") as
28 Plaintiff against Debtor and Defendant Evander Frank Kane ("Kane").

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3. Defendant and Debtor Evander Frank Kane ("Kane") is an individual, who currently resides in Santa Clara County, California at 2301 Richland Avenue, San Jose, California 95125 according to his bankruptcy filing in the main bankruptcy case, which is Case Number 21-50028 SLJ 7 filed in the U.S. Bankruptcy Court for the Northern District of California (San Jose Division).

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4. Professional Bank is a secured creditor of Defendant and Debtor Evander Frank Kane. In March 2019, Kane borrowed \$1,500,000 from Professional Bank in 2019. As collateral and security for the payment of the loan, and as the inducement for Professional Bank to lend Kane the money, Kane gave Professional Bank a security interest in Kane's income stream of \$49,000,000 over seven years that Kane has from the San Jose Sharks ("Sharks"). Loan payments were to be made automatically from Kane's income from the Sharks, with automatic payments going from the Sharks to Professional Bank. Almost immediately after that loan closed, Kane breached the terms of the loan, failed to make required payments, and revoked the automatic payment provisions that had been promised and agreed to

1 as inducement for the loan. As alleged below, the expressed intent
2 and plan by Kane and Kane's counsel are that Professional Bank will
3 not be paid.

4
5 5. Kane is a professional hockey player on the San Jose
6 Sharks ("Sharks") of the National Hockey League ("NHL"). Kane is
7 in the third year of a seven year contract with the Sharks where
8 Kane is paid approximately \$7,000,000 per year as base
9 compensation. Kane's contract with the Sharks is a standard NHL
10 contract that essentially guarantees those payments to Kane even
11 if Kane is unable to play.

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14 JURISDICTION AND VENUE

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16 6. This court has jurisdiction for this Adversary Proceeding
17 as a part of the main bankruptcy case pursuant to 28 U.S.C. Section
18 157 and 28 U.S.C. Section 1334.

19
20 7. Venue for this Adversary Proceeding is appropriate as
21 part of the main bankruptcy case pursuant to 28 U.S.C. Section
22 1409.

23
24 8. This Adversary Proceeding is a core proceeding pursuant
25 to 28 U.S.C. Section 157.

26
27 9. This Adversary Proceeding is commenced pursuant to
28 Federal Rules of Bankruptcy Procedure, Rule 7001.

1 FACTUAL BACKGROUND

2
3 10. In early 2019, Kane sought to borrow \$1,500,000 from
4 Professional Bank.

5
6 11. The terms that Kane promised and agreed to were that the
7 loan would coincide with the remaining years on Kane's \$49,000,000
8 player contract with the Sharks, and that the loan would be paid
9 off by 2025. In addition, the loan was secured by, among other
10 things, the stream of income that Kane has from the Sharks through
11 the 2025 season. Also, the payments would be made automatically
12 and directly to Professional Bank from the Sharks from the amounts
13 that Kane was entitled to receive from the Sharks based on Kane's
14 NHL contract. Also, Kane waived all legal provisions and potential
15 objections that Kane might otherwise argue that might limit
16 Professional Bank's ability to have a security interest in and to
17 receive payments directly from the Sharks as part of Kane's stream
18 of income from the Sharks.

19
20 12. Kane signed the documents on 3/26/19 and a notary
21 acknowledged his signature.

22
23 13. As part of the loan, there was an advance reserve held by
24 and paid to Professional Bank by Kane to cover the payments that
25 would be due between the signing date and the payment due date of
26 10/15/19.

27
28 14. The Security Agreement gave Professional Bank a security

1 interest in Kane's payments from the NHL contract. The Security
2 Agreement also provided for a security interest in other items, but
3 the security interest in the stream of income from the Sharks to
4 Kane was a main consideration for the loan.

5
6 15. The Security Agreement was accompanied by a UCC-1
7 Financing Statement filing with the California Secretary of State
8 on 3/27/19. Other documents included the following: Automatic
9 Transfer Authorization; Promissory Note for \$1,500,000; Agreement
10 to Waive Garnishment Protection; Cooperation Agreement; Errors and
11 Omissions Agreement; Post-Closing Agreement; Direct Deposit
12 Enrollment Agreement.

13
14 16. There were no payments due from Kane from the time of the
15 closing of the loan through 10/15/19, because of the advance
16 payment amount that had been retained by Professional Bank. By the
17 time the payment for 11/15/19 was due, Kane was in default,
18 including by him revoking the automatic payment that was to occur
19 from the Sharks to Professional Bank for each payment. Kane has
20 been in default ever since that date.

21
22 17. Based on the conduct of Kane after he received the money
23 and before there was any additional performance by Kane, it is
24 clear and undisputable that Kane made promises that he did not
25 intend to perform. Kane had no intention of repaying the
26 \$1,500,000 loan from Professional Bank. Kane blocked the payment
27 provision (direct payment to Professional Bank from the Sharks)
28 before the first payment was due, and that has remained blocked

1 continuously since then.

2

3 18. Kane also misrepresented his financial circumstances and
4 financial condition. He also overstated his assets, and he
5 understated his liabilities.

6

7 19. It appears from conduct and circumstances that have
8 become known since March of 2019 that Kane was likely insolvent
9 when he obtained the money from Professional Bank, but that
10 information was fraudulently concealed from Professional Bank.

11

12 20. It is appears likely from conduct and circumstances since
13 March of 2019 that Kane intended to declare bankruptcy and intended
14 to take the position that he was not going to pay Professional Bank
15 and Kane's other creditors.

16

17 21. It appears likely that the initial planning of the
18 bankruptcy was believed to be already in process and in progress
19 when Kane requested the loan from Professional Bank. At around
20 that same time, Kane was also borrowing enormous amounts of money
21 from other banks including Centennial Bank, Zions Bancorporation,
22 and South River Capital. Kane was also incurring enormous amounts
23 of debt owed to other creditors. By all appearances, the plan back
24 then was that these amounts were never going to be paid or paid
25 back.

26

27 22. As of November 2019, Kane was already in default
28 regarding Professional Bank before his first payment was due.

1 23. During late 2019 and throughout 2020, Kane and his legal
2 representatives and legal counsel were supposedly "negotiating" for
3 paying off the creditors, but instead they were in fact just
4 creating delay of more than 12 months for legal strategy purposes
5 and for purposes of what they considered an inevitable bankruptcy
6 filing which they then ultimately filed on 1/9/21.

7
8 24. The bankruptcy case filing was of a Chapter 7 despite the
9 fact that Kane has \$30,000,000 of guaranteed income in the next 3-4
10 years that could pay his creditors in full, or nearly in full, with
11 proper financial management of Kane's enormous income. The
12 bankruptcy case was filed as a Chapter 7 instead of a Chapter 11
13 so that Kane could try to walk away from \$15,000,000+ of debts that
14 he incurred in 2019 that was in default on as soon as he received
15 the money.

16
17 25. The expressed intention of Kane and Kane's counsel, as
18 expressed in the pleadings filed in the main bankruptcy case, and
19 in statements by Kane's counsel, is to deny Professional Bank's
20 security interest in the stream of income from the Sharks to Kane,
21 and to prevent Professional Bank from being paid from that stream
22 of income from the Sharks to Kane, despite the fact that the stream
23 of income was the expected source of payment to Professional Bank
24 of the loan balance owed by Kane. There appears at this point to
25 be no other meaningful source of payment for Professional Bank, and
26 neither Kane nor his counsel have identified any other source of
27 payment, and have not said that there is any intent by Kane or his
28 counsel to make any payments to Professional Bank.

1 26. The bankruptcy filing under Chapter 7 has characteristics
2 of "abuse" of Chapter 7 for the reasons set forth herein, and there
3 should be a finding of a presumption of abuse.
4

5 27. Plaintiff Professional Bank is entitled to punitive and
6 exemplary damages based on the fraud of Defendant Kane. Plaintiff
7 seeks punitive and exemplary damages in an amount of ten times the
8 amount of the compensatory damages (\$15,000,000).
9

10 28. Plaintiff Professional Bank is entitled to attorneys'
11 fees in litigation between Professional Bank and Kane based on the
12 loan documents and agreements between them. Plaintiff seeks
13 attorneys' fees in an amount according to proof.
14

15
16 FIRST CLAIM FOR RELIEF

17 (Nondischargeable Debt)
18

19 29. Plaintiff refers to and incorporates by such reference
20 the allegations contained elsewhere in this Complaint.
21

22 30. Professional Bank seeks a determination that the debts
23 owed by Kane to Professional Bank are nondischargeable pursuant to
24 Federal Rules of Bankruptcy Procedure, Rule 7001(6) and 11 U.S.C.
25 Section 523(a)(2)(A) and 11 U.S.C. Section 523(a)(2)(B).

26 11 U.S.C. Section 523(a)(2)(A) provides that debts are
27 nondischargeable for debts:

28 (2) for money, property, services, or an extension,

1 renewal, or refinancing of credit, to the extent obtained
2 by--

3 (A) false pretenses, a false representation, or
4 actual fraud, other than a statement respecting
5 the debtor's or an insider's financial
6 condition;

7 11 U.S.C. Section 523(a)(2)(B) provides that debts are
8 nondischargeable for debts involving:

9 (B) use of a statement in writing--

10 (i) that is materially false;

11 (ii) respecting the debtor's or an
12 insider's financial condition;

13 (iii) on which the creditor to whom the
14 debtor is liable for such money, property,
15 services, or credit reasonably relied; and

16 (iv) that the debtor caused to be
17 made or published with intent to
18 deceive; or
19

20 31. The debt owed by Kane to Professional Bank is
21 nondischargeable for the above reasons and based on the above
22 standards.
23

24 WHEREFORE, Plaintiff Professional Bank prays for Judgment
25 against Defendant Kane, as prayed for below.

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32. Plaintiff refers to and incorporates by such reference the allegations contained elsewhere in this Complaint.

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1 36. Professional Bank seeks injunctive relief or other
2 equitable relief to force the payment from Sharks compensation to
3 Kane to instead be used to repay the loan amounts owed to
4 Professional Bank pursuant to the Security Agreement and security
5 interest that Professional Bank has in that stream of income,
6 pursuant to Federal Rules of Bankruptcy Procedure, Rule 7001(7) and
7 related authorities.

8
9 WHEREFORE, Plaintiff Professional Bank prays for Judgment
10 against Defendant Kane, as prayed for below.

11
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13 FOURTH CLAIM FOR RELIEF

14 (Declaratory Relief)

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16 37. Plaintiff refers to and incorporates by such reference
17 the allegations contained elsewhere in this Complaint.

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19 38. Professional Bank seeks declaratory relief and to obtain
20 a declaratory judgment relating to the allegations and claims
21 herein, pursuant to Federal Rules of Bankruptcy Procedure, Rule
22 7001(9) and related authorities.

23
24 WHEREFORE, Plaintiff Professional Bank prays for Judgment
25 against Defendant Kane, as prayed for below.

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1 FIFTH CLAIM FOR RELIEF

2 (Denial of Discharge)

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4 39. Plaintiff refers to and incorporates by such reference
5 the allegations contained elsewhere in this Complaint.
6

7 40. Professional Bank objects to Kane receiving a discharge
8 based on the conduct as alleged herein and based on the other
9 conduct regarding other creditors as is contained in the main
10 bankruptcy case file and in motions and Adversary Proceedings by
11 other creditors, including actions to hinder, delay, and/or defraud
12 creditors, and/or actions to transfer, remove, conceal, etc.
13 property in which Professional Bank has a security interest,
14 pursuant to Federal Rules of Bankruptcy Procedure, Rule 7001(4) and
15 11 U.S.C. Section 727, and related authorities.
16

17 WHEREFORE, Plaintiff Professional Bank prays for Judgment
18 against Defendant Kane, as prayed for below.
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21 DEMAND FOR JURY TRIAL

22 Plaintiff Professional Bank hereby demands a jury trial on all
23 matters that are triable by a jury.
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1 DAMAGES AND PRAYER FOR RELIEF

2
3 WHEREFORE, Plaintiff Professional Bank prays for Judgment
4 against Defendant Kane, as follows:

5 1. For all general, special, and compensatory damages in a
6 sum according to proof at trial;

7 2. For punitive and exemplary damages as alleged herein;

8 4. For the determinations, the declaratory relief, and the
9 injunctive relief requested in this Complaint;

10 4. For costs of suit incurred herein;

11 5. For such reasonable attorneys' fees as are recoverable
12 according to applicable law;

13 6. For such other and further relief that the Court deems to
14 be just and proper.

15
16
17 Dated: May 3, 2021

LAW OFFICES OF
STEPHEN G. OPPERWALL

18
19 /s/ Stephen G. Opperwall

20 STEPHEN G. OPPERWALL
21 Attorneys for Creditor
Professional Bank

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